IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6331 OF 2006

Airports Authority of India .. Petitioner.
Vs.
Suhem Ahmed Nomani & Others .. Respondents.

Mr.V.J.Mehta I/B M/s.Bhaishankar Kanga & Girdharilal for the petitioner.
Mr.Subhash Jha a/w Mr.Ratneshwar Jha for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 9TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and the respondents.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Jha, learned counsel waives service for the respondents.

3. By this writ petition, the petitioner has impugned the order dated 8.8.2006 passed by the trial Court dismissing the application filed by the petitioner seeking permission to file written statement on record. From perusal of the observations made by the learned Judge in paragraph 2 of the impugned order as also the order dated 16th January, 2006 there appear to be some confusion about the date of service of summons on the petitioner-defendant. It

appears that on 16.1.2006 the suit had appeared when the learned Judge had accepted the petitioner's submission that they had not filed written statement as they had not been served with the writ of summons. By the order dated 16.1.2006 the learned Judge found from the court record that the respondents had not taken steps for service of summons of the suit on the defendants and were directed to do so expeditiously. Accordingly, the learned Judge adjourned the matter for suit summons to 16.2.2006. However, I do not deem it necessary to enter into a controversy whether the summons was in fact served on the petitioner. It appears from the record that on two dates i.e. 16.2.2006 and 28.4.2006 though the written statement was ready it could not be tendered since the board was discharged. It has been so stated in the application as also in the present writ petition.

4. The Legislature has conferred the powers to condone delay by enacting section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression 'sufficient cause' employed is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Keeping this enunciation in view coupled with the judgment of the Apex Court in **Shaikh**

Salim Haji Abdul Khayumsab Vs. Kumar and Others (2006) 1 Supreme Court 46 holding that Order 8 Rule 1 and proviso thereto (as amended by the Act of 22 of 2002 w.e.f. 1.7.2002) is directory, I am inclined to allow this petition. Further, it is well settled that what counts is not length of the delay but the sufficiency of the cause and shortness of delay is one of the circumstances to be taken into account in using the discretion. Although no special indulgence can be shown to the petitioner which, in similar circumstances, is not shown to an individual suitor, one cannot but take practical view of the working of the statutory Corporation without being unduly indulgent to its typical working. Certain amount of latitude is not impermissible. It is very pertinent to note that in the present case at no stage of the proceedings the learned Judge dealing with the suit has passed "No W.S." order. In the circumstances the impugned order dated 8.8.2006 is quashed and set aside. The petitioner is allowed to file written statement within one week from the date of receipt of this order subject to the payment of cost of Rs.2,000/- to be paid to the respondent-plaintiff. The trial Court shall proceed with the hearing of the suit and dispose of the same on merits.

. Rule is, accordingly, disposed of in the

aforesaid terms.

(D.B.Bhosale, J.)